

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

226 EAST PARKDALE AVENUE
HOLDINGS, LLC,

Plaintiff,

Hon. Janet T. Neff

v.

Case No. 1:10-cv-01212

LANDMARK VENTURE PROPERTIES,
LLC, et al.,

Defendants.

/

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for Entry of Default Judgment (Dkt. 36), which was referred to the undersigned by the Honorable Janet T. Neff for report and recommendation under 28 U.S.C. § 636(b)(1)(B). This matter involves a Microtel located in Manistee, Michigan. Some but not all of the defendants, specifically Landmark Venture Properties, LLC, Big River Inn, Inc., and Harry Kolk, were defendants in a prior litigation entitled East Parkdale Avenue Holdings, LLC v. Landmark Venture Properties, LLC et al., Case No. 1:09-cv-00476-JTN, which was dismissed without prejudice on December 9, 2009, pursuant to a settlement (Dkt. 37 in Case No. 1:09-cv-00476-JTN).

Karen Kolk, Richard Kolk, and Jessica Kolk were added as parties to the settlement agreement to which Plaintiff claims there has been a default. No attorney appeared on behalf of any defendant, and no defendant answered the complaint.

A motion hearing was held on plaintiff's emergency motion for order appointing receiver, at which only defendant Richard Kolk appeared (Dkt. 10). Defendant Richard Kolk was repeatedly advised that he could not represent the other individual defendants, nor could he represent the corporate defendants, Landmark Venture Properties, LLC and Big River Inn, Inc., as a non-attorney. Because defendant Richard Kolk had raised some questions regarding the accounting submitted by Plaintiff, the motion was continued until January 6, 2011. Defendants Richard Kolk and Harry Kolk appeared at the continued hearing. The undersigned issued a Report and Recommendation (Dkt. 22) that the Emergency Motion for Entry of Stipulated Order Appointing Receiver (Dkt. 5) be granted, which Report and Recommendation was adopted and approved (Dkt. 33). On January 25, 2011, a default was entered as to all defendants (Dkt. 29).

Plaintiff then filed a motion for default judgment, supported by affidavit (Dkt. 36), with a proposed judgment of foreclosure and final judgment against all defendants (Dkt. 36, Exh. B). A hearing was held on the motion on June 24, 2011 (Dkt. 40). Richard Kolk appeared on behalf of himself. He made an oral motion requesting an accounting from the defendant in order that taxes for 2010 could be completed and filed. The undersigned advised plaintiff's counsel that such request would be granted if made by written motion by Richard Kolk. Richard Kolk made no objection to the figures stated by affidavit of plaintiff's agent and none of the defendants, corporate or individual, have yet answered the complaint as of the date of this Report and Recommendation. The property is presumably currently being run and managed by the Receiver, Michael George.

The undersigned has carefully reviewed the complaint in this matter and all attachments thereto (Dkt. 1); the motion for default judgment, brief in support, and all exhibits attached thereto (Dkt. 36 and 37); the affidavit of plaintiff's agent, David H. Smith, attached to the brief in support

of the motion for entry of default judgment (Dkt. 36, Exh. A); and the notice of lis pendens (Dkt. 38). The proposed Judgment of Foreclosure and Final Judgment Against Defendants (Dkt. 36, Exh. B) filed by plaintiff contained a numerical error for the amount of judgment. The corrected proposed Judgment of Foreclosure and Final Judgment Against Defendants (attached as Exhibit A to this Report and Recommendation) comports with the facts contained in the complaint and attached exhibits, including the affidavit of David H. Smith. Further, the financial figures appear to be accurate. Finally, the various citations contained in the corrected proposed judgment have been examined by the undersigned and appear to be accurate and applicable.

Therefore, the undersigned reports that the Plaintiff is entitled to the relief requested and recommends that the judgment attached as Exhibit A to this Report and Recommendation be entered. The undersigned further recommends that there be added to the judgment an order awarding attorney's fees consistent with the affidavit of Eric C. Bartley in Support of Attorneys' Fees (Dkt. 41) against all defendants, jointly and severally, in the amount of \$33,015.00 plus \$1,851.55 in costs.

Respectfully submitted,

Date: July 5, 2011

/s/ Ellen S. Carmody
ELLEN S. CARMODY
United States Magistrate Judge

OBJECTIONS to this Report and Recommendation must be filed with the Clerk of Court within 14 days of the date of service of this notice. 28 U.S.C. § 636(b)(1)(C). Failure to file objections within the specified time waives the right to appeal the District Court's order. *Thomas v. Arn*, 474 U.S. 140, 155 (1985); *United States v. Walters*, 638 F.2d 947, 949-50 (6th Cir. 1981).